

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DAVONTE LOVE,

Plaintiff,

v.

Case No. 11-C-881

DONNELISHA JACKSON, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Love, who is proceeding pro se, lodged a civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. Plaintiff is currently incarcerated at the Milwaukee County Correctional Facility.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner plaintiff is required to pay the statutory filing fee of \$350.00 for a federal lawsuit. If a prisoner does not have the money to pay the filing fee up front, he or she can request leave to proceed *in forma pauperis* in order to pay the fee over time. To proceed with an action *in forma pauperis*, the prisoner must complete a petition and affidavit to proceed *in forma pauperis* and return it to the court with a certified copy of the prisoner's trust account statement showing transactions for the prior six months. The court then assesses and, when funds exist, collects from the plaintiff at the time the action is filed an initial partial filing fee of twenty percent of the average monthly deposits to or the average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint.¹

¹In no event will a prisoner be prohibited from bringing a civil action because he or she has no assets and no means by which to pay the initial partial filing fee. 28 U.S.C. § 1915(b)(4).

In this case, the plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint. He also filed the required affidavit of indigence. Upon review of the trust account statement and affidavit, I am satisfied that plaintiff is unable to pay the statutory filing fee in this case. Leave to proceed *in forma pauperis* therefore will be granted.

However, it is clear from the complaint that the Plaintiff has not stated a claim upon which relief may be granted. Plaintiff asserts that the three named defendants have slandered his name. Slander is a state law cause of action that cannot be brought in federal court unless the individuals are from different states and the amount of damages exceeds \$75,000. Neither of those conditions are apparent here. Accordingly, the complaint is dismissed for lack of subject matter jurisdiction. Nothing in this order prevents Plaintiff from filing a slander action in state court.

THEREFORE, IT IS ORDERED that plaintiff's request to proceed *in forma pauperis* is **GRANTED** and the initial partial filing fee is **WAIVED**.

IT IS ORDERED that the administrator of the Milwaukee County Correctional Facility or his designee shall collect from the plaintiff's prison trust account the balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to twenty percent of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10.00 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that the clerk of court enter judgment accordingly.

I FURTHER CERTIFY that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

Dated this 30th day of September, 2011.

s/ William C. Griesbach _____
William C. Griesbach
United States District Judge